

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 RITA M. LANE
Deputy Attorney General
4 State Bar No. 171352
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2614
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2010-492**

12 **SHERI JACOBS, RN**
13 **2251 Stern Goodman, #300**
14 **Fullerton, CA 92833**

ACCUSATION

15 **Registered Nurse License No. 376027**

16 **Respondent.**

17
18 **Complainant alleges:**

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about August 31, 1984, the Board of Registered Nursing issued Registered
24 Nurse License Number 376027 to Sheri Jacobs, RN (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought herein and expired on
26 January 31, 2010.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

7. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

8. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

1
2 (b) Use any controlled substance as defined in Division 10 (commencing
3 with Section 11000) of the Health and Safety Code, or any dangerous drug or
4 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
5 or in a manner dangerous or injurious to himself or herself, any other person, or
6 the public or to the extent that such use impairs his or her ability to conduct with
7 safety to the public the practice authorized by his or her license.

8 (c) Be convicted of a criminal offense involving the prescription,
9 consumption, or self-administration of any of the substances described in
10 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
11 record pertaining to, the substances described in subdivision (a) of this section, in
12 which event the record of the conviction is conclusive evidence thereof.

13
14 9. Section 2765 of the Code states:

15 A plea or verdict of guilty or a conviction following a plea of nolo
16 contendere made to a charge substantially related to the qualifications, functions
17 and duties of a registered nurse is deemed to be a conviction within the meaning of
18 this article. The board may order the license or certificate suspended or revoked,
19 or may decline to issue a license or certificate, when the time for appeal has
20 elapsed, or the judgment of conviction has been affirmed on appeal or when an
21 order granting probation is made suspending the imposition of sentence,
22 irrespective of a subsequent order under the provisions of Section 1203.4 of the
23 Penal Code allowing such person to withdraw his or her plea of guilty and to enter
24 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
25 accusation, information or indictment.

26 10. Section 2770.11 of the Code states:

27 (a) Each registered nurse who requests participation in a diversion program
28 shall agree to cooperate with the rehabilitation program designed by the committee
and approved by the program manager. Any failure to comply with the provisions
of a rehabilitation program may result in termination of the registered nurse's
participation in a program. The name and license number of a registered nurse
who is terminated for any reason, other than successful completion, shall be
reported to the board's enforcement program.

 (b) If the program manager determines that a registered nurse, who is denied
admission into the program or terminated from the program, presents a threat to
the public or his or her own health and safety, the program manager shall report
the name and license number, along with a copy of the diversion records for that
registered nurse, to the board's enforcement program. The board may use any of
the records it receives under this subdivision in any disciplinary proceeding.

11. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to
evaluate the rehabilitation of a person when:

1
2 (b) Considering suspension or revocation of a license under Section 490.

3 Each board shall take into account all competent evidence of rehabilitation
4 furnished by the applicant or licensee.

5 12. Section 490 of the Code states:

6 (a) In addition to any other action that a board is permitted to take against a
7 licensee, a board may suspend or revoke a license on the ground that the licensee
8 has been convicted of a crime, if the crime is substantially related to the
9 qualifications, functions, or duties of the business or profession for which the
10 license was issued.

11 (b) Notwithstanding any other provision of law, a board may exercise any
12 authority to discipline a licensee for conviction of a crime that is independent of
13 the authority granted under subdivision (a) only if the crime is substantially related
14 to the qualifications, functions, or duties of the business or profession for which
15 the licensee's license was issued.

16 (c) A conviction within the meaning of this section means a plea or verdict
17 of guilty or a conviction following a plea of nolo contendere. Any action that a
18 board is permitted to take following the establishment of a conviction may be
19 taken when the time for appeal has elapsed, or the judgment of conviction has been
20 affirmed on appeal, or when an order granting probation is made suspending the
21 imposition of sentence, irrespective of a subsequent order under the provisions of
22 Section 1203.4 of the Penal Code.

23 (d) The Legislature hereby finds and declares that the application of this
24 section has been made unclear by the holding in *Petropoulos v. Department of*
25 *Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has
26 placed a significant number of statutes and regulations in question, resulting in
27 potential harm to the consumers of California from licensees who have been
28 convicted of crimes. Therefore, the Legislature finds and declares that this section
 establishes an independent basis for a board to impose discipline upon a licensee,
 and that the amendments to this section made by Senate Bill 797 of the 2007 -08
 Regular Session do not constitute a change to, but rather are declaratory of,
 existing law.

13. Section 492 of the Code states:

 Notwithstanding any other provision of law, successful completion of any
 diversion program under the Penal Code, or successful completion of an alcohol
 and drug problem assessment program under Article 5 (commencing with section
 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
 agency established under Division 2 ([Healing Arts] commencing with Section

500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

14. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

REGULATIONS

15. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

16. California Code of Regulations, title 16, section 1445, states in pertinent part:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

1 (4) Whether the licensee has complied with any terms of parole, probation,
2 restitution or any other sanctions lawfully imposed against the licensee.

3 (5) If applicable, evidence of expungement proceedings pursuant to Section
4 1203.4 of the Penal Code.

5 (6) Evidence, if any, of rehabilitation submitted by the licensee.

6 COSTS

7 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licensee found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 FIRST CAUSE FOR DISCIPLINE

12 (January 2, 2008 Criminal Conviction for Driving Under the Influence on October 30, 2007)

13 18. Respondent is subject to disciplinary action under Code sections 490 and 2761(f) in
14 that she was convicted of a crime substantially related to the qualifications, functions, and duties
15 of a registered nurse. The circumstances are as follows:

16 19. On or about January 2, 2008, in a criminal proceeding entitled *People of the State of*
17 *California v. Sheri Catherine Jacobs*, in the Orange County Superior Court, Case No.
18 07NM14677MA, Respondent was convicted on her plea of guilty to violating Vehicle Code
19 section 23152(a) (driving under the influence), a misdemeanor.

20 20. On or about January 2, 2008, imposition of sentencing was suspended and
21 Respondent was placed on three years informal probation; ordered to serve one day in county jail;
22 to attend and complete a 9 month level 2 first offender alcohol program; pay fines in the amount
23 of \$590; and pay \$362 in court related fees.

24 21. The circumstances regarding the incident are that on or about October 30, 2007 at
25 approximately 11:17 am, shortly after being terminated from her nursing employment at Garden
26 Grove Hospital and Medical Center, for showing up to work impaired, Respondent drove her
27 vehicle head on into another vehicle that was stopped across the intersection at a red light. The
28 driver of the other vehicle told the officer that he saw Respondent drive straight into his car and
she appeared to have her eyes closed and was sleeping. Prior to the accident, witnesses had

1 observed Respondent's vehicle swerving on the road. The responding officer smelled the odor of
2 alcohol on Respondent's breath and coming from her person. Respondent denied taking any
3 alcohol or drugs that day to the responding officer. Respondent failed the sobriety test
4 administered by the police officer. Respondent was arrested for driving under the influence of
5 alcohol and given a blood alcohol test at the police station. Respondent's blood alcohol level
6 was .21.

7 SECOND CAUSE FOR DISCIPLINE

8 (Conviction of a Crime Involving the Consumption of Alcohol)

9 22. Respondent is subject to disciplinary action under Code section 2762(c) in that she
10 was convicted of a crime involving the consumption of alcohol when on January 2, 2008,
11 Respondent was convicted of driving under the influence. The circumstances are more
12 specifically set forth in paragraphs 18 through 21 above, and incorporated herein by reference as
13 though fully set forth herein.

14 THIRD CAUSE FOR DISCIPLINE

15 (Use of Alcohol in a Manner Dangerous to Herself and to the Public)

16 23. Respondent is subject to disciplinary action under Code section 2762(b) in that on
17 October 30, 2007, Respondent used alcohol in a manner dangerous to herself and the public when
18 she drove her vehicle while under the influence of alcohol and caused a car accident. The
19 circumstances are more specifically set forth in paragraphs 18 through 21 above, and incorporated
20 herein by reference as though fully set forth herein.

21 FOURTH CAUSE FOR DISCIPLINE

22 (Use of Alcohol in a Manner Dangerous to the Public to the Extent

23 That Such Use Impaired Respondent's Ability to Work Safely as a Registered Nurse)

24 24. Respondent is subject to disciplinary action under Code section 2762(b) in that
25 Respondent used alcohol in a manner dangerous to the public to the extent that her use impaired
26 her ability to work as a registered nurse when she reported to duty at work under the influence of
27 alcohol. The circumstances are as follows:

28 ///

25. On or about October 30, 2007, shortly after Respondent arrived to work and reported to duty at Garden Grove Hospital and Medical Center, Respondent was observed by coworkers to be impaired and her speech was slurred. Respondent was removed from the patient care areas and escorted to Human Resources where she consented to a drug screen. The results of the drug screen were positive for alcohol and Respondent was terminated.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct, Termination from Board's Diversion Program)

26. Respondent is subject to disciplinary action under Code sections 2761(a) and 2770.11 in that Respondent engaged in unprofessional conduct when she was terminated from the Board's Diversion Program. The circumstances are as follows:

27. On or about December 2, 2007, Respondent entered Maximus, the Board's Diversion Program, as a Board referral based on a complaint that was received by the Board.

28. On March 24, 2008, Respondent was terminated from Maximus for Respondent's refusal to follow the recommendation by the Diversion Evaluation Committee to enter a long term residential treatment program of not less than 90 days. The Diversion Evaluation Committee made the recommendation based on Respondent having two positive ETG tests for alcohol on February 29, 2008 and March 7, 2008 and one test result that was "out of range" during the four months that she was in the Board's Diversion Program. Because of Respondent's failure to comply, the Diversion Evaluation Committee deemed Respondent a public safety risk.

PRAAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 376027, issued to Sheri Jacobs;

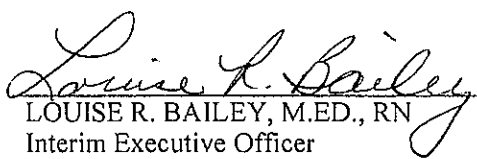
2. Ordering Sheri Jacobs to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Taking such other and further action as deemed necessary and proper.

DATED: 4/6/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2010800031
80432430.doc